IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19509 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PARBATSINH HALAJI RATHOD & 4 - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR VC VAGHELA for Petitioner(s) : 1 - 5.
MR SIRAJ GORI AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1, 4,
MR DHAVAL M BAROT for Respondent(s) : 2,
MR HARIN P RAVAL for Respondent(s) : 3, 5,
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/11/2005

ORAL JUDGMENT

1. In the present petition, the petitioners have challenged an order dated 18th September, 2005 passed

by the Joint Secretary, Panchayat Rural Housing Development and Rural Development Department, Govt. of Gujarat. Before adverting to the legal issues arising short facts necessary to appreciate the contentions raised by the learned advocates need to be noted.

2. Petitioners are elected members of Taluka Panchayat, Deesa. Deesa Taluka Panchayat was constituted in the year 2003. Executive Committee of the Taluka Panchayat was elected after constitution of the Taluka Panchayat. Term of the Executive Committee being two years, in the anticipation of the term of the existing Executive Committee expiring, a special meeting of Taluka Panchayat, Deesa was summoned on 29th July, 2005. President of Taluka Panchayat presided over the said meeting. Item No.6 of the agenda for the meeting in question pertained to the constitution of the Executive Committee. Two rival groups proposed different names for electing members of the Executive Committee. At the end of the discussion the proposals were taken up for voting. The division of votes was equal and both

proposals received 14 votes each. The petitioners requested for drawing of lots to select one out of two panels for election of members for Executive Committee. The President of the Panchayat turned down the request and instead exercised his power of casting second vote and that is how the dead lock was sought to be broken. It is the case of the petitioners that on account of casting vote of the President of the Panchayat the rival group of members of the Taluka Panchayat who belong to BJP party were elected to constitute a new Executive Committee. It is the case of the petitioners that the correct procedure to be adopted in such a case would have been to draw lots and the President did not have power to cast his vote again.

2.1 With this grievance the petitioners preferred an appeal before the Appellate Committee of the District Panchayat, Palanpur questioning the decision of the President to elect members of the Executive Committee through casting vote. The appeal of the petitioners came to be allowed by the appellate committee by an order dated 17th August, 2005.

2.2 Respondent no.5 herein who is one of the members of the Taluka Panchayat challenged the decision of the Appellate Committee by filing a revision application before the State Government. His revision application came to be allowed by the Government by the impugned order dated 18/9/2005. The petitioners have preferred the present petition to call in question the order dated 18/9/2005 passed by the State Government, by which the decision of the President of the Taluka Panchayat was restored and the decision of the Appellate Committee was set aside.

3. In view of the above factual background short question that calls for consideration in the present petition is whether the procedure adopted by the President of the Taluka Panchayat to resolve the dead lock on account of equal number of votes having been received by the two panels, by casting vote, was legal or not and whether the same ought to have been resolved by drawing lots as is sought to be contended by the learned advocate for the petitioners.

4. Learned advocate Shri Vaghela appearing for the petitioners contended that the President of the Panchayat had no power to exercise his vote second time as a casting vote and that the only proper procedure that was required to be followed in such a case was to resolve dispute by drawing of lots. Learned advocate Shri Vaghela brought to the notice of the Court provisions contained in Section 123 of the Gujarat Panchayats Act, 1993 (hereinafter referred to as “the said Act”) as well as provisions of Section 127 of the said Act and contended that Section 127 of the said Act, which provides for the casting of votes of the President of the meeting of a Taluka Panchayat would apply in a case where the Taluka Panchayat is considering administrative questions and would not include a situation where the meeting of the Taluka Panchayat is held for electing members to the Executive Committee. It was contended that Section 63 of the said Act provides that drawing of lots in case of equality in the number of votes for election of President or Vice President of the Taluka Panchayat. He submitted that Section 127 of

the said Act would not apply in case of equality of votes for election of members of the Executive Committee and that, therefore, there being no other provision in the said Act covering such a situation, on the analogy of the provisions of drawing of lots as provided under Section 63, similar formula should have been adopted in the present case also.

5. On the other hand learned advocate Shri Raval for respondent nos. 3 and 5 resisted the petition. He submitted that the provisions in the said Act are amply clear. Section 127 of the said Act covers all situations were a decision is being taken by Taluka Panchayat in its meeting. He submitted that no distinction can be drawn between situation were Taluka Panchayat is taking administrative steps or where election of members of Executive Committee is being considered by the Taluka Panchayat. He pointed out that in the decision of **Balwantrai Bhimbhai Desai v. Taluka Panchatat Kamrej & Ors. reported in 1980 (21) GLR page 9,** learned Single Judge of this Court interpreting *pari-materia* provisions of the Gujarat Panchayats Act, 1962 had taken a view that even in a

case were the Panchayat is transacting the business of election of members to Executive Committee, Presiding Officer of the meeting would have a casting vote in case of equality of votes.

6. Learned AGP Shri Gori and learned advocate Shri Raval supported the decision under challenge.

7. At this stage one may advert to some of the provisions contained in the said Act. Section 123 of the said Act provides for various committees of a Taluka Panchayat and its constitution. The said section inter alia provides for a Executive Committee for exercise such powers and discharge such duties of the taluka panchayat as may be assigned to them by the panchayat. Sub section 3 of Section 123 provides that no committee other than the Executive Committee shall consist of more than five members and the Executive Committee shall consist of not more than nine members. Sub section 5 of Section 123 provides that members of a committee constituted under this section shall be elected by the panchayat from amongst its members. Sub section 6 of section 123

provides that where any committee is constituted under this section the members of the committee shall elect from amongst themselves the Chairman of the committee.

7.1 Section 127 of the said Act provides that all questions before a meeting of a taluka panchayat or committee therefore, shall be decided by majority of votes of the members present and unless otherwise provided in this Act, the presiding officer of the meeting shall have a second or casting vote in all cases of equality of votes. Section 127 of the said Act reads as follows:

> “S.127: All questions before a meeting of a taluka panchayat or committee therefore, shall be decided b a majority of votes of the members present and unless otherwise provided in this Act, the presiding officer of the meeting shall have a second or casting vote in all cases of equality of votes:
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> Provided that in such circumstances and subject to such conditions, as may be prescribed, a decision on any question before a committee may be taken by circulating the propositions therefore for the votes of members.”

7.2 It may also be noted at this stage that Section

63 of the said Act to which reference was made by the learned advocate to the petitioners pertains to the first meeting of the taluka panchayat upon being constituted for the election of its President and Vice President from amongst its elected members.

7.3 Sub section 5 of Section 63 provides that the meeting shall be presided over by such officer as the competent authority may order in that behalf. It further provides that such officer shall have such powers and follow such procedure as may be prescribed but shall not have the right to vote. Sub section 5 of section 63 reads as follows:

> "The first meeting shall be presided over by such officer as the competent authority may by order appoint in that behalf. Such officer shall have such powers and follow such procedure as may be prescribed but shall not have the right to vote".

7.4 Sub section 7 of section 63 provides that if at the election under the section, there is an equality of votes the result of the election shall be decided by lot drawn in the presence of the presiding officer as he may determine. Sub section 7 of section 63 reads as follows:

"If at the election under the section, there is an equality of votes, the result of the election shall be decided by lot drawn in the presence of the presding officer as he may determine".

8. From the statutory provisions noted herein above it can be seen that for the purpose of election of the members of the Executive Committee and other committees of the taluka panchayat detailed provisions have been made in Section 123 of the said Act. Section 127 of the said Act in term provides that all questions before the meeting of a taluka panchayat shall be decided by a majority of votes of the members and unless otherwise provided under the Act the presiding officer of the meeting shall have second or casting vote in all cases of equality of votes. A meeting of taluka panchayat which transacts the business of election of the members of Executive Committee is also one of the questions covered and envisaged under Section 127 of the said Act and it is not possible to accept that the question regarding election of the members of Executive Committee would not fall within the preview of provisions of Section 127 of the said Act. It would, therefore, follow

that the procedure of resolving a dead lock in the case of equality of votes through a casting vote of the Presiding Officer of the meeting as provided u/s 127 of the said Act would equally apply in a case where the business being transacted at the meeting of the taluka panchayat is one of election of members of Executive Committee.

9. I am unable to accept the contention of learned advocate for the petitioners that analogy of the provisions of Section 63 of the said Act would apply in case of equality of votes while electing members of Executive Committee. It is undoubtedly true that Sub Section 7 of Section 63 provides for drawing of lots in case of equality of votes while electing President or Vice President of the taluka panchayat and does not envisage a casting vote of the Presiding Officer. Sub section 5 of Section 63 of the said Act provides that a name or an ad-hoc Presiding Officer of the meeting to be appointed by the competent authority and he is not an elected President of the taluka panchayat or an elected Presiding Officer of a meeting. In fact Sub section 5 of Section 63 clearly

provides that such a person presiding over the first meeting of the taluka panchayat shall not have the right to vote. Provisions contained in Section 63 of the said Act for resolving the dead lock resulting due to equality of votes and those contained in Section 127 of the said Act are, therefore, made with entirely different back ground in mind.

10. Quite apart from my personal view, learned Single Judge of this Court had already concluded the above controversy in the decision of **Balwantrai Bhimbhai Desai (supra)** wherein while interpreting provisions of Section 115 of the Gujarat Panchayats Act, 1962, which are pari-materia with the provisions of Section 127 of the said Act learned Single Judge made following observations:

> "7.It is significant to note in this connection that sec. 55, which inter alia deals with the election of the President and Vice-President of a Taluka Panchayat at the first meting after the constitution or reconstitution of such Panchayat, makes a specific provision in sub-sec. (5) to the effect that if at the election under the said section, there is an equality of votes, the result of the election shall be decided by lot drawn in the presence of the presiding officer in such manner as he may determine. Similar provision is to be found in sub-sec. (5) of sec. 67 in relation to the election of the President and Vice-President of a District Panchayat at the first meeting called after

the constitution or reconstitution of such a Panchayat. These are specific provisions which would exclude the operation of Sec. 115 and similar section 135 in cases of equality of votes at such election. Since, admittedly, there is no such provision governing the situation arising out of equality of votes at a meeting of the Taluka Panchayat held for the purpose of constituting one or more of the statutory committees and the legislature has made a specific departure by note making any such provision, sec. 115 would be attracted and the presiding officer of the meeting would be entitled to have a second or casting vote. It matters not, subject to what follows, that such second or casting vote might turn the scales in the matter of constitution of one or more of the statutory committees of the taluka panchayat. Instances are not unknown of such provision having been made in case of tie in election of officer bearers. In certain statutes in England, provision is made regarding the Chairman having a casting vote in case of equality of votes even in cases of election of aldermen or mayor. In my opinion, therefore,the the first submission urged on behalf of the petitioner is not well-founded and it must be rejected".

11. In the result, I am unable to accept the contention of learned advocate for the petitioners that the President of the Taluka Panchayat erred in exercising his casting vote to resolve the dead lock arising of equality of votes and that the correct procedure ought to have been that on drawing of lots. I find that the procedure adopted was just and legal and the order under challenge calls for no interference. Petition is rejected. Notice

discharged. No order as to costs.

(Akil Kureshi, J.)

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